

PROOF VERSION ONLY

LAW REFORM COMMITTEE

Inquiry into powers of entry, search, seizure and questioning by authorised officers

Melbourne – 13 December 2001

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Mr R. Hunter, Executive Officer, Royal Society for the Prevention of Cruelty to Animals.

**Necessary corrections to be notified to
executive officer of committee**

The CHAIRMAN — On behalf of the Law Reform Committee I welcome you to the hearings into the powers of entry, search, seizure and other matters. I invite you to speak generally to issues that you would like to raise with the committee, following which we will ask a range of questions.

Mr HUNTER — The Royal Society for the Prevention of Cruelty to Animals inspectorate presently comprises 12 members and has authority under the Prevention of Cruelty to Animals Act, which allows members of Victoria Police, officers of the RSPCA, the Department of Natural Resources and Environment and local government councils who have approval from the Minister for Agriculture to exercise powers under the legislation.

Generally speaking, our inspectors respond to complaints from the public, which is probably 75 per cent of their work, and the rest of the time is spent either following up, revisiting those situations or occasionally carrying out routine inspections of areas where animals are held. We would like to be doing more of that but do not have the resources.

Inspectors have a limited right of entry to some properties. They can go onto property where they have grounds for reasonable belief that animals require feeding, watering, veterinary attention or destruction. They have access to property other than dwelling places for those purposes.

The issues for the RSPCA are that there should be provision to have power of access to commercial and farming properties for the inspection of animals where those animals are kept for a commercial purpose, and there should be provision for a system of warrants for entry into dwelling houses where there is reasonable belief animals are suffering. Currently there is no way to gain entry into a dwelling place where there is more than reasonable grounds of belief that animals are suffering.

Ms McCALL — You said access to commercial properties. Give me an example of, say, a rural commercial property, such as battery hens?

Mr HUNTER — We would class that as farming property. Commercial properties would be abattoirs or saleyards.

The CHAIRMAN — You also mentioned dwellings.

Mr HUNTER — Dwellings are a separate issue. There is no power under the legislation to gain any form of access to dwellings, even though we may have clear knowledge that animals are suffering inside a dwelling place. Our submission is that we should have a fettered right, probably by ministerial warrant, on the presentation of prima facie evidence of a problem. We do not have any blanket right to enter dwelling houses for whatever reason. We believe there should be a power to search for animals where there is a reasonable belief they are used for illegal purposes, such as cockfighting or dogfighting.

We should have the power of entry without warrant into vehicles where animals are suffering — for example, dogs locked in hot cars. I must admit that we have over the years forced entry in extreme circumstances, but there is no legal basis.

We should also have power of seizure with warrant for suffering animals which we believe need to be moved into another place for safe keeping or for treatment. We should have the power to obtain information required to provide care for those animals, subject to people's privilege against self-examination, and power to issue instructions to people to take particular steps for the care of animals, that power of itself being backed by legislation. That is basically the set of changes that the RSPCA would like to have.

Mr LANGUILLER — In general terms I welcome your recommendations, but the other side of the coin is that an officer must be properly and highly trained, particularly those in the RSPCA and other authorities. Will you comment on the type of training, on the assumption that you were to be granted these additional powers, you would put in place in order to fulfil those powers adequately and to have the support of the community? Also what are the levels and the forms of consultation between the RSPCA and other authorities — for example, councils? I understand councils also have certain powers to carry out certain actions when and if required. What level of consultation takes place, and what is your view on the training and expertise that particularly other officers of other agencies, such as councils, have in your professional judgment?

Mr HUNTER — Commonly our inspectors come to us with tertiary qualifications in animal-related fields. They will normally be graduates of Longerenong or Dookie agricultural colleges, and we would train them in inspectorate duties. Occasionally we recruit the other way around, where they have qualifications in something

that would apply to inspector duties and then we need to train them in animal health matters. Either way, the inspectors are appointed on a six-month probationary period that comprises the training period.

I heard an earlier witness refer to the detective training course. Our inspectors attend that course and have structured training throughout the period. They are tested each week throughout training. We do not apply for ministerial approval until the training period is completed to our satisfaction, and then we submit to the minister for approval.

We have recently instituted a meeting of the various groups that have power under the act. That meeting is convened by the director of the Bureau of Animal Welfare within the Department of Natural Resources and Environment and has representatives from Victoria Police, ourselves, councils and the department. One of the first issues raised by the council representative was the training of council officers. He contrasted what I have said about the training of our inspectors with what is common in councils, where they will simply appoint someone, send a letter to the minister and then the officer is authorised under the legislation. There is no training regime.

One of the reasons is, apart from the power to prosecute under the legislation, the other power that goes to inspectors is the power to destroy animals. Often councils simply want their officers to be protected by the authorisation to destroy animals, such as injured animals on the side of the road, because the way the legislation is written the authorisation is always given to both destroy animals and to launch prosecutions. Many council officers authorised to prosecute under the legislation have no wish to do so. They would normally refer issues to us that may warrant prosecution.

We have discussed this with the director of the bureau. The legislation must clearly separate the two powers so we can have people appointed for one without the other.

Mr STENSHOLT — The power of entry to commercial farm properties is, presumably, for the purposes of inspection?

Mr HUNTER — That is right.

Mr STENSHOLT — Yesterday Liberty Victoria suggested that the starting point should be the same powers as the police. In other words, they want to search but they have to have a warrant. It is not quite the same thing, you are looking at inspection powers rather than necessarily responding to particular situations, is that right?

Mr HUNTER — When talking about power to inspect animals on commercial and farming premises we are talking about areas where large numbers of animals are kept, often in transit. There are often a whole lot of issues that must be looked at. Normally our inspectors are either welcomed or can negotiate access, but from time to time they are refused entry. Those refusals would usually be from people at the margin rather than the mainstream operators.

Mr STENSHOLT — The need to enter on the basis that you have a reasonable presumption could be a problem there?

Mr HUNTER — I would see it as an inspection across the board in those commercial areas, such as abattoirs and saleyards.

Mr STENSHOLT — In that case, why should it be done by the RSPCA as opposed to the department, because it has a much broader mandate?

Mr HUNTER — The department has other power to go onto a property under the various disease and noxious weeds control mechanisms. We cannot exercise that power and then use it in an animal welfare sense.

Mr STENSHOLT — You could be if it were mandated that way?

Mr HUNTER — If it were, but currently the powers of the department, the police, ourselves and councils are identical under the legislation. We are not suggesting that only the RSPCA have the power of inspection.

Mr STENSHOLT — Just the extension of power in response to inspections?

Mr HUNTER — It has been talked about for a long time. It is important to understand that it is only asked for in respect of those areas where animals are kept intensively and in large numbers.

Mr STENSHOLT — In terms of what you mean by commercial premises, how would you adjudge in terms of inspection, for example, laboratories for animal experimentation?

Mr HUNTER — We are specifically excluded under the legislation from inspecting laboratories. Provision is made for specialist inspectors — only departmental officers — who police the provisions covering animal experimentation. They are declared by the minister. We are not happy with that provision, but that is way it is, and we will continue to seek to have it changed, but I do not see any chance of success in the future.

Mr STENSHOLT — Some of the commercial premises would be exempted, would they not?

Mr HUNTER — Yes. Specialist inspectors have the right of access at any time for inspection of animal experimentation facilities.

Ms McCALL — The increased powers you are requesting presumably will also look at increased penalties to support them?

Mr HUNTER — We have submissions on penalties, but I do not have them in front of me.

Ms McCALL — You mentioned experimentation and specialist inspectors. If you enter premises and believe that as a result of going in experimentation was going on, do you then immediately call a specialist inspector on the spot? That type of liaison does go on, I presume?

Mr HUNTER — Absolutely. Their power and our exclusion apply to licensed premises if it is a licensed animal experimentation premises, but if it is unlicensed we would have the same powers we have in other places.

Ms HADDEN — Under the Prevention of Cruelty to Animals Act, do premises under the powers of inspectors include commercial operations?

Mr HUNTER — Yes. There is power of access on the basis of reasonable belief that a certain set of circumstances exist.

Ms HADDEN — What additional powers would your organisation see as being beneficial to inspectors under the act for the welfare of animals?

Mr HUNTER — With commercial premises we believe there is a need for an ability to carry out routine inspections simply to see that things are being done appropriately. A series of codes of practice govern the operation of those facilities, and we believe they should be the procedures for inspection to see that those codes are complied with.

With dwelling houses we believe there is a need for a warrant system, and that could best be done before a magistrate with the presentation of evidence that there is an existing problem, and then a warrant could be executed in company with the police to resolve it. With motor vehicles we are talking about immediate problems, particularly during the summer period, with dogs in hot cars, which is the most common problem. Frankly, we have gained access in the past simply by breaking the car window when we cannot find the owner. There is no legal sanction for that. We believe there should be a mechanism for gaining access in emergency situations. I am not sure what the law says regarding children locked in cars. There should be an ability to take immediate action, with the person taking the action protected by the law.

Ms HADDEN — Do you have a complaints data system on the use of your inspectors powers?

Mr HUNTER — We have a complaints registration system. All of our activities are documented. Inspectors are required to log their activities throughout the day. When using unusual powers, such as access to the motor vehicle registry and telephone system to get addresses and so on, we have a tight set of protocols on how they are used. Those are subject to audit each year, and we provide an audit certificate to the various authorities that grant us access. If we were to have extended powers of access to dwelling places through warrant and so on, we would maintain the same type of system.

Mr STENSHOLT — How do you handle a complaint against the actions of one of your inspectors?

Mr HUNTER — If it is an internal complaint we carry out an investigation and respond to the complainant. If they are dissatisfied, they would, generally speaking, go to the Ombudsman.

Mr STENSHOLT — Even though you are a humane society rather than a government department?

Mr HUNTER — We have for a long period volunteered to place ourselves under the supervision of the Ombudsman, because we believe that is the proper way to do it. There is a further sanction that they can go to the Minister for Agriculture, because he has the ability to remove approval from any of our people at any time. Officers are individually approved, not the organisation. If their behaviour is found to be unsuitable, they would be dismissed.

Mr STENSHOLT — Can people go to the Victorian Civil and Administrative Tribunal?

Mr HUNTER — I do not know, because it has never been done. I presume they can.

Mr STENSHOLT — If you have more notes available on your complaints procedure, they would be handy for the committee to have.

Mr HUNTER — Certainly.

The CHAIRMAN — What is your level of government funding, if any?

Mr HUNTER — Not enough. The RSPCA receives \$100 000 a year from the government. The total operating expenditure last year was \$14.5 million, which is mainly raised from public donations, legacies and the usual forms of fundraising. The \$100 000 is directed entirely towards the operation of the inspectorate, which costs about \$1.4 million a year to run.

The CHAIRMAN — That is an extraordinary private-versus-public funding ratio, is it not?

Mr HUNTER — In the early 1980s it was \$260 000, and it was subject to indexation. Through the various changes of government it is now \$100 000, and it has been fixed at that figure since 1992. It is almost irrelevant to us in the scheme of things. I am not saying that we do not want it, but it does not form any part of the organisation's income.

The CHAIRMAN — I may be going back over what you have already stated, but if a suffering animal is on private property the RSPCA is constrained, for a multitude of reasons, from going onto that property. If someone reported to your organisation that animals were suffering, who would you refer it to — a local council officer or a member of the police force?

Mr HUNTER — That is risky, because in each case they would be exercising a power given to them for another purpose. A council officer can certainly go onto a property to carry out inspections under health regulations or to see if the animal is registered under the domestic animals legislation. However, if the officer exercises power in that way to resolve an animal welfare issue he has misused his power.

The CHAIRMAN — Am I interpreting you correctly to say that there is a void in the law that deals with the powers of inspectors to look after animal welfare issues?

Mr HUNTER — Yes, we believe so., Even where we have reasonable grounds to believe an animal is either suffering starvation or has untreated injuries there is limited access to open property. To give an example, we dealt with a case in Prahran three or four years ago where the report to us was that inside a flat a man was torturing a dog using a screwdriver. We cast about for two days trying to find ways of getting access to the flat. The person would not let us or anyone else in. At the end of the two days we still had not resolved the issue, but the dog died and was thrown out the window. There was no difficulty prosecuting and convicting him. The difficulty was resolving the problem two days earlier when the report came in.

The CHAIRMAN — If a lady had a multitude of cats, say 20 or 30, and it was apparent the conditions inside the house were not helpful to their welfare, who would have authority to intervene?

Mr HUNTER — In terms of the welfare of the cats, no-one. If there was a public health issue a council officer could gain access. If there was a suggestion that the cats were not registered or the women had more cats than the council allowed in a dwelling house, the provisions of the Domestic (Feral and Nuisance) Animals Act would be helpful. If it was simply the fact that the cats were starving or dying from disease, there would be no provision for anyone to gain access.

Mr LANGUILLER — I generally tend to support civil liberties, but my anecdotal experience in the City

of Brimbank, which is within the Legislative Assembly seat of Sunshine, is that dogs have been locked up in cars or horses have been left starving in paddocks. To be plain about it, what areas do you think you can live with in terms of having to obtain warrants, and what areas are there where, in a practical sense, if you could not obtain warrants you or other authorities could not carry out your tasks and duties expeditiously in the community.

Mr HUNTER — The major area where there should be some system of warrant in place is the entry to dwelling premises. I do not think there is any doubt that that should be controlled by warrant, but there is a need for some system to gain access. The other is a warrant to allow animals to be removed from a property for a specified period. The RSPCA has the legislative power to allow its officers to enter a paddock to provide feed to animals that have not been fed over a period or to provide veterinarian treatment. Often that is impractical. The animals may be standing in a paddock where there is no feed, and the only answer is to truck in large amounts of feed. If that occurred now that would be a requirement right through to the autumn breaking rains that come in May. There may be a paddock down the road with feed that may be available. If the law already allows us to feed animals, there should be a warrant system to allow us to remove them from the paddock for a specified period and place them in a paddock where there is feed. If there is a dog in a backyard with a broken leg, the laws says we can take a veterinarian onto the property to treat the dog, but that is often not practical. What is practical is to take the dog to the veterinarian. There should be a warrant, subject to a magistrate's approval, to allow us to remove the dog to a particular place for a particular period.

The CHAIRMAN — Why do you think the RSPCA has not been given the power to enter private property to inspect the conditions under which animals are kept?

Mr HUNTER — I think the civil liberty implications are what it is about. I do not think it has been addressed in any other form. I have never heard another objection. I think it could be adequately addressed by a formal warrant system.

Ms HADDEN — Going back to the Prahran incident, why couldn't the police or a council officer knock on the door and enter the property?

Mr HUNTER — The police power of entry is not unfettered. We are talking about a simple offence before the Magistrates Court, and not a crime. If a crime is being committed and is continuing to be committed, police can force access, but they do not have any more power than we do for simple offences.

Ms HADDEN — As a matter of course would you have contacted the police?

Mr HUNTER — Yes, we did contact the police. Years ago they probably would have pushed the door open, pushed the person aside and gone in, but times have changed.

Ms HADDEN — You would not have known from the noises whether it was human or animal?

Mr HUNTER — We had very specific information as to what was happening — even the breed of the dog.

Ms HADDEN — What is the level, if any, of interaction and cooperation between local government and the RSPCA, especially as you both operate under the same legislation?

Mr HUNTER — The cooperation between the four authorities who have possible powers under the act is very good. We often use local government officers to check animals for us. If we get a report in an outlying suburb or in the country that there is a mob of horses starving in a paddock we often ask the local council ranger to have a look as he is going past and make sure there is a reason to send someone out. Quite often they come to us with cases, as do the police. They hand over issues to us for action because they have other priorities.

The CHAIRMAN — Thank you very much for your time. Whom would my colleagues contact if they wanted to make requests to your organisation?

Mr HUNTER — They could contact me.

Witness withdrew.